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**UNITED STATES DISTRICT COURT  
IN THE NORTHERN DISTRICT OF CALIFORNIA**

OMAR LOPEZ GUARDADO,

Plaintiff,

v.

PORTFOLIO RECOVERY  
ASSOCIATES, LLC,

Defendant.

Case No.: 3:21-cv-00187

**COMPLAINT AND DEMAND FOR  
JURY TRIAL FOR VIOLATIONS  
OF:**

1. Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*;
2. Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*;
3. CAL. CIV. CODE § 1788 *et seq.*;
- and
4. Intrusion Upon Seclusion

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Omar Lopez Guardado (“Plaintiff” or “Mr. Lopez Guardado”), by and through his attorneys, alleges the following against Portfolio Recovery Associates, LLC (“PRA” or “Defendant”):

## **INTRODUCTION**

1  
2 1. Count I of Plaintiff's Complaint is based upon the Telephone  
3 Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. The TCPA is a federal  
4 statute that broadly regulates the use of automated telephone equipment. Among  
5 other things, the TCPA prohibits certain unsolicited marketing calls, restricts the  
6 use of automatic dialers or prerecorded messages, and delegates rulemaking  
7 authority to the Federal Communications Commission ("FCC").  
8  
9

10  
11 2. Count II and III of Plaintiff's Complaint is based upon the Fair Debt  
12 Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, and Rosenthal Fair  
13 Debt Collection Practices Act ("RFDCPA"), CAL. CIV. CODE § 1788 *et seq.*, which  
14 prohibit debt collectors from engaging in abusive, deceptive and unfair practices in  
15 connection with the collection of consumer debts.  
16  
17

18 3. Count IV of Plaintiff's Complaint is based upon the Invasion of  
19 Privacy Intrusion upon Seclusion, as derived from § 652B of the Restatement  
20 (Second) of Torts. § 652B prohibits an intentional intrusion, "physically or  
21 otherwise, upon the solitude or seclusion of another or his private affairs or  
22 concerns... that would be highly offensive to a reasonable person."  
23  
24

## **JURISDICTION AND VENUE**

25  
26 4. Jurisdiction of this court arises under 47 U.S.C. § 227 *et seq.* and 28  
27 U.S.C. 1331.  
28



1           13. Defendant acted through its agents, employees, officers, members,  
2 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,  
3 representatives, and insurers.  
4

5                           **FACTUAL ALLEGATIONS**

6           14. Defendant is attempting to collect an alleged debt from Plaintiff.  
7

8           15. The debt is a “debt” as defined under 15 U.S.C. § 1692a(5) as it is an  
9 obligation or alleged obligation of a consumer to pay money arising out of a  
10 transaction in which the money, property, insurance, or services which were the  
11 subject of the transaction were primarily for personal, family, or household  
12 purposes.  
13  
14

15           16. In or around January 2020, in an attempt to collect on an alleged  
16 consumer account, Defendant began contacting Plaintiff on his cellular phone  
17 number and home phone number ending in 1230 and 3235, respectively.  
18

19           17. On or about January 14, 2020 at approximately 3:54 p.m., Plaintiff  
20 answered a call from Defendant on his home phone number. After picking up the  
21 call, Plaintiff noticed an unusually long delay and recalls hearing a series of beeps  
22 or tones before the representative began speaking, consistent with the use of an  
23 automatic dialing system.  
24  
25

26           18. The representative indicated that Defendant was attempting to collect  
27 a debt.  
28

1           19. Plaintiff informed the representative that he was not in a position to  
2 make any kind of payments.

3           20. Further, Plaintiff informed Defendant that he and his wife attempted  
4 to start their own business while he was also attending military pilot training.  
5

6           21. Plaintiff stated that they were not able to make any profits from the  
7 business and requested that he be contacted through the mail only.  
8

9           22. Despite explaining his situation and revoking consent to be contacted  
10 on his cell phone, Defendant continued its assault of harassing automated debt  
11 collection calls to Plaintiff's cellular phone and home phone.  
12

13           23. Again, on or about September 17, 2020, Plaintiff answered a call from  
14 Defendant on his cellular phone. After picking up the call, Plaintiff noticed an  
15 unusually long delay and recalls hearing a series of beeps or tones before the  
16 representative began speaking, consistent with the use of an automatic dialing  
17 system.  
18

19           24. The representative indicated that Defendant was attempting to collect  
20 a debt.  
21

22           25. Plaintiff informed the representative that he already spoke to  
23 Defendant and stated that he did not have any money to pay.  
24

25           26. Plaintiff requested that Defendant only communicate with him in  
26 writing.  
27  
28

1           27. Between January 14, 2020 and January 06, 2020, Defendant called  
2 Plaintiff on his cellular phone approximately one hundred and twenty (120) times.

3           28. Between January 14, 2020 and January 06, 2020, Defendant called  
4 Plaintiff on his home phone approximately two hundred (200) times.  
5

6           29. On an almost daily basis, Defendant would call both Plaintiff's cell  
7 phone and home phone number within short periods of time between each call.  
8

9           30. On several occasions, Defendant called Plaintiff multiple times within  
10 the same minute.  
11

12           31. Upon information and belief, Defendant also called and texted, or  
13 attempted to call and text friends and family of Plaintiff, with the intention that they  
14 would communicate to Plaintiff that Defendant was attempting to collect a debt  
15 from him, causing Plaintiff additional embarrassment and distress.  
16  
17

18           32. Upon information and belief, Defendant called Plaintiff and delivered  
19 prerecorded or artificial voice messages.  
20

21           33. Upon information and belief, Defendant's automatic dialer failed to  
22 return to the on-hook state within 60 seconds of completion of dialing.  
23

24           34. Upon information and belief, the phone system used by Defendant  
25 places more calls than there are collection representatives available, resulting in  
26 more calls made to Plaintiff.  
27  
28

1           35. Upon information and belief, use of the automated telephone dialing  
2 system by Defendant allowed Defendant to call Plaintiff more times than it  
3 otherwise would have been able to had it dialed manually, increasing the harassing  
4 nature of the calls.  
5

6           36. Upon information and belief, Defendant's phone system is capable of  
7 placing tens of thousands of automated phone calls a day.  
8

9           37. Upon information and belief, Defendant's representatives did not  
10 review Plaintiff's account notes and/or file prior to initiating the collection calls to  
11 his cell phone and home phone.  
12

13           38. Upon information and belief, Defendant's phone system is  
14 programmed to automatically place a call to Plaintiff's cell phone or home phone,  
15 and if there is no answer on the first number, it places a call to the other number on  
16 file.  
17

18           39. The phone system utilized by Defendant, in conjunction with  
19 Defendant's policies and procedures regarding collection on accounts were aimed  
20 at causing Plaintiff such distress and annoyance that he would make a payment,  
21 despite knowing he was not able to.  
22

23           40. Defendant's conduct was done willfully and knowingly.  
24  
25  
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1           41. Defendant was aware that Plaintiff had revoked consent to be called,  
2 and despite this, Defendant continued to place automated debt collection calls to  
3 Plaintiff's cell phone and home phone.  
4

5           42. Defendant was aware that Plaintiff was unable to make a payment  
6 because of a failed business attempt, was attending military pilot training, and  
7 despite this, continued to place automated debt collection calls to Plaintiff's cell  
8 phone and home phone.  
9

10           43. Defendant's calls were excessive and done with the purpose of  
11 attempting to harass Plaintiff into making a payment on the account.  
12

13           44. Defendant would place a call to Plaintiff's cell phone and home phone  
14 within short periods of time of one another in an attempt to harass Plaintiff to  
15 answer the phone and make a payment.  
16

17           45. Defendant caused Plaintiff's cell phone and home phone to ring  
18 repeatedly or continuously with the intention to annoy, abuse, or harass him.  
19

20           46. The conduct was not only willful but done with the intention of  
21 causing Plaintiff such distress, so as to induce him to pay the debt.  
22

23           47. Further, the conduct was done with such frequency so as to harass  
24 Plaintiff and cause him great annoyance.  
25  
26  
27  
28



1           48. Plaintiff attempted to explain his situation and request that Defendant  
2 contact him in writing only in an attempt to get the calls to stop, however,  
3 Defendant continued to lay siege on Plaintiff's cell phone and home phone.  
4

5           49. Defendant's intrusion upon Plaintiff's seclusion was highly offensive  
6 to the reasonable person and far exceeded reasonable collection efforts.  
7 Defendant's conduct was especially unreasonable because it called relentlessly  
8 shortly after Plaintiff had explained he was not able to make a payment, was dealing  
9 with personal issues and wanted to be contacted in writing.  
10

11           50. Defendant acted maliciously and subjected Plaintiff to oppression.  
12

13           51. Due to Defendant's actions, Plaintiff has suffered from immense  
14 emotional and mental pain and anguish, including but not limited to, stress, anxiety,  
15 headaches, sleepless nights, embarrassment and humiliation.  
16

17  
18                               **COUNT I**  
19                               **(Violations of the TCPA, 47 U.S.C. § 227)**

20           52. Plaintiff incorporates by reference all of the above paragraphs of this  
21 Complaint as though fully stated herein.  
22

23           53. Defendant violated the TCPA. Defendant's violations include, but are  
24 not limited to the following:  
25

- 26           a. Within four years prior to the filing of this action, on multiple  
27 occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii)  
28

1 which states in pertinent part, “It shall be unlawful for any person  
2 within the United States . . . to make any call (other than a call made  
3 for emergency purposes or made with the prior express consent of the  
4 called party) using any automatic telephone dialing system or an  
5 artificial or prerecorded voice — to any telephone number assigned to  
6 a . . . cellular telephone service . . . or any service for which the called  
7 party is charged for the call.  
8  
9

10  
11 b. Within four years prior to the filing of this action, on multiple  
12 occasions, Defendant willfully and/or knowingly contacted Plaintiff  
13 using an artificial prerecorded voice or an automatic telephone dialing  
14 system and as such, Defendant knowing and/or willfully violated the  
15 TCPA.  
16  
17

18 54. As a result of Defendant’s violations of 47 U.S.C. § 227, Plaintiff is  
19 entitled to an award of five hundred dollars (\$500.00) in statutory damages, for  
20 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds  
21 that Defendant knowingly and/or willfully violated the TCPA, Plaintiff is entitled  
22 to an award of one thousand five hundred dollars (\$1,500.00), for each and every  
23 violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).  
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**COUNT II**

**Violations of the FDCPA, 15 U.S.C. §1692 *et seq.***

55. Plaintiff incorporates by reference the foregoing paragraphs as fully stated herein.

56. Defendant violated the FDCPA. Defendant's violations include, but are not limited to the following:

- a. Engaging in any conduct the natural consequence of is to harass, oppress, or abuse any person in connection with the collection of a debt. §1692d.
- b. Causing a phone to ring or engaging a person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass. §1692d(5).
- c. Using unfair or unconscionable means to collect or attempt to collect any debt. §1692f.

57. The FDCPA provides a consumer with a private right of action against a debt collector for both actual and statutory damages and allows the consumer to recover his reasonable attorneys' fees and costs. §1692k(a).

**COUNT III**

**(Violations of CAL. CIV. CODE § 1788 *et seq.*)**

58. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

1           59. Defendant violated the RFDCPA. Defendant's violations include, but  
2 are not limited to, the following:

3           a. Defendant violated CAL. CIV. CODE § 1788.11(d) by causing a  
4           telephone to ring repeatedly or continuously to annoy the person  
5           called;  
6

7           b. Defendant violated CAL. CIV. CODE § 1788.17 by collecting or  
8           attempting to collect a consumer debt without complying with the  
9           provisions of Sections 1692b to 1692j, inclusive, of . . . Title 15 of the  
10           United States Code (Fair Debt Collection Practices Act).  
11

12           i. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15  
13           U.S.C. § 1692d by engaging in conduct, the natural  
14           consequence of which is to harass, oppress or abuse any person  
15           in connection with the collection of the alleged debt;  
16

17           ii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15  
18           U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or  
19           engaging Plaintiff in telephone conversations repeatedly; and  
20

21           iii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15  
22           U.S.C. § 1692f by using unfair or unconscionable means in  
23           connection with the collection of an alleged debt;  
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- a. Defendant intentionally intruded, physically or otherwise, upon Plaintiff's solitude and seclusion by engaging in harassing phone calls in an attempt to collect on an alleged debt despite Plaintiff's request for the calls to cease.
- b. The number and frequency of the telephone calls to Plaintiff by Defendant after Plaintiff's request for the calls to cease constitute an intrusion on Plaintiff's privacy and solitude.
- c. Defendant's conduct would be highly offensive to a reasonable person as Plaintiff received calls that often-interrupted Plaintiff's work.
- d. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

66. As a result of Defendant's violations of Plaintiff's privacy, Defendant is liable to Plaintiff for actual damages.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Omar Lopez Guardado, respectfully requests judgment be entered against Defendant Portfolio Recovery Associates, LLC, for the following:

- A. Statutory damages pursuant to 47 U.S.C. § (b)(3)(B) and 47 U.S.C. § (b)(3)(C);

- 1 B. Declaratory judgment that Defendant violated the FDCPA  
2 and RFDCPA;  
3  
4 C. Statutory damages pursuant to 15 U.S.C. §1692k(a)(1), (2)(A)  
5 and Cal. Civ. Code §1788.30(b);  
6  
7 D. Actual damages pursuant to 15 U.S.C. §1692k(a)(1), (2)(A)  
8 and Cal. Civ. Code §1788.30;  
9  
10 E. Costs and reasonable attorneys' fees pursuant to 15 U.S.C.  
11 §1692k(a)(3) and Cal. Civ. Code §1788.30(c);  
12  
13 F. Punitive damages to be determined at trial, for the sake of  
14 example and punishing Defendant for its malicious conduct,  
15 pursuant to Cal. Civ. Code § 3294;  
16  
17 G. Awarding Plaintiff any pre-judgment and post-judgment  
18 interest as may be allowed under the law; and  
19  
20 H. Any other relief that this Honorable Court deems appropriate.

21 **DEMAND FOR JURY TRIAL**

22 Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a trial  
23 by jury of all issues triable by jury.  
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1 Respectfully submitted this 8th day of January 2021.

2  
3 By: /s/ Youssef H. Hammoud  
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